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Aplikace práva soudem z právně-sociologické perspektivy

Résumé

The thesis – The Applications by a Court from the Legally-Sociological Perspective -deals partly with an individual who applies law within the frame of justice, partly with justice as such. An individual who lives and works within such a complicated organisation as modern justice appears to be, is influenced by the organization, and so his work is influenced – thereby the application of law itself.

Various judicial systems as they have been developed over the years, aim at the same targets in the rough. However, they choose different means for target achievement. The position of judges in meritocratic and career justice is also different. The differences can be seen in the way judge candidates are chosen, in what way judges are appointed and in the possibility to remove judges from their office. Two different systems have been analysed in detail – the US federal judicial system as an example of meritocratic justice and the Czech judicial system as a typical example of career justice. Regarding the USA, there is a mention of judicial elections that do not refer to the federal judicial system and seem to be a domain only in several US states. The elections are considered to be such a unique way of judge appointment so that is the reason why their pros and cons are also mentioned exactly as they are understood in the USA.

Futhermore, the position of judges has also been studied in terms of professional and human qualities. Special attention is given to the system of professional training for judge candidates , which is , based in its nature, possible only in career justice. In some systems there are periodical examinations of judges, especially at the beginning of their careers, eventually a probation period is provided. In this part, comparisons of various models in continental European countries are used. Futhermore, the level of personal and moral development, the level determination and follow-up monitoring, ethical standards and codes, possible consequences of ethical misconduct have been analysed.

Both, entering the judicial system as well as a possible removal from office , are understood in a different ways in various judicial systems, more details are given about the process of impeachment in the USA and a removal from office in the Czech judicial system.(disciplinary transgression, conviction of a crime, etc.)

Motivation of judges is the significant element of judges' and judicial system life. This can exist in several levels. More details are given about financial motivation as it is thought to be a hot topic nearly in every judicial system. The comparison of salary rates in other countries of continental Europe is shown and the opinion of American authors is given as the financial evaluation of federal judges in the USA seems to be a very burning issue.

One of the parts deals shortly with judicial independence and provides more details about judges' responsibility, which is the matter in career justice that has not been studied properly yet . That is the reason why especially the opinion of American authors, usually federal judges, was used.

Judges are not the only people who apply law in judicial systems and so the position of middle administrative personnel at Czech courts has been analysed in short. This personnel dispose of specific powers that resemble powers of a judge. Viewing this issue from the other side, the position of the personnel is totally different, safeguarding of their independence is perceived in totally different quality which influences their decision making in a retroactive way.

The second part of the thesis deals with justice as a system. At first the existing condition governing the Czech justice has been analysed with consideration of other systems of continental Europe. Organization and administration of justice, systems of justice administration, judicial self-government are meant by the existing condition. In context of the judicial self-government, there is a mention of councils of judges working in the countries of continental Europe, of their competence, of their anchoring in the system, etc. Concerning the systems of justice administration, I have applied experience from Canada, as a very detailed report has been worked up there, concerning to systems of justice administration, advantages and disadvantages of various systems and their comparison.

In the terms of Czech justice, the existing condition has been described as a system resulting from the existing law on courts and judges and traditions of after-war arrangement and administration. Certain attention is given to reformatory steps. However, they have lacked their single intention. Single steps are analysed in detail, these are especially electronisation of justice and tendency to change work organization at courts by mini team building.

The closing part of the thesis deals with a view at justice as a formal organization in the terms of sociology. It is the organization endangered by byrocratization from different directions.

One of the directions is byrocratization of litigation itself where considerable ritualization of rules and communication appears. The ritualitazion more and more impedes justice to carry out its principal function, i. e. protection of breached rights of individuals. An ordinary man is losing his ability to understand litigation, to perform all his procedural duties and to comply with judicial notices.

The judicial hierarchy has an effect on the fact that decision making of a judge is influenced by the atmosphere of the organization more than the person is able to admit, and more than the public is able to tolerate. A judge is no more the only person who is responsible for decisions, which is the result of the fact that courts are overloaded not only in Europe but also in the USA. There is a tendency to solve this overloading partly by reduction of the time a judge spends on a case, and partly by moving work and responsibility out of a judge, to assistants and officers.

The last aspect of byrocratization of justice is setting the goals of justice which is in no accordance at individual levels. Responsibility is laid upon a judge to comply with various conceptions of goals that he should reach at work. He is also obliged to fulfil the goals directly or indirectly by the whole system. Various contracting authorities can view his role in different ways so that it can cause a conflict.

For a qualified lawyer, the possibility to make a free and creative decision is one of the highest goals which can be reached in the profession. If most judges understand their profession like this, there should appear a bigger problem neither with their personal and professional qualities, nor with the quality of decision making, nor with the perception of justice with wide public. In consideration of the fact that the profession of judge has become more prestigious than it used to be during the years of the totality regime, this should be

demonstrated by gradual improvement of quality of judges and judicial staff.

Although justice as an organization, as well as judges and other personnel have surely their imperfections which can be improved, the thesis can be concluded that justice is still a quite efficient organism that is able to ensure the application of law in most countries.

